



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

June 20, 2012

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No.7009 1680 0000 7667 8117

Ms. Lynn Georges
Monterey Agresources
2935 South Koke Mill Rd.
Springfield, Illinois 62711

Consent Agreement and Final Order, In the Matter of Nordox AS,
Docket No. FIFRA-05-2012-0014

Dear Ms. Georges:

Enclosed please find a copy of a fully executed Consent Agreement and Final Order, in resolution of the above case. This document was filed on June 20, 2012, with the Regional Hearing Clerk.

The civil penalty in the amount of \$15,000 is to be paid in the manner described in paragraphs 45 thru 46. Please be certain that the number **BD 2751245P013** and the docket number are written on both the transmittal letter and the wire transfer receipt. Payment is due by July 19, 2012, (within 30 calendar days of the filing date).

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Claudia Niess".

Claudia Niess
Pesticides and Toxics Compliance Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. FIFRA-05-2012-0014
)	
Nordox AS)	
Oslo, Norway)	Proceeding to Assess a Civil Penalty
)	Under Section 14(a) of the Federal
Through its agent)	Insecticide, Fungicide, and Rodenticide
)	Act, 7 U.S.C. § 136l(a)
Monterey Agresources)	
Fresno, California)	
)	
Respondent.)	
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**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

**Consent Agreement and Final Order
Commencing and Concluding a Proceeding**

1. This is an administrative action commenced and concluded under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136l(a), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules) as codified at 40 C.F.R. Part 22.
2. The Complainant is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (EPA), Region 5.
3. Respondent is Nordox AS (Nordox), a partnership, association, corporation, or any organized group of persons whether incorporated or not, doing business in Oslo, Norway.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

9. Respondent certifies that to the best of its knowledge, it is complying with FIFRA, 7 U.S.C. §§ 136 to 136y.

Statutory and Regulatory Background

10. The importation of pesticides into the United States is governed by Sections 17(c) and (e) of FIFRA, 7 U.S.C. §§ 136o(c) and 136o(e), and the regulations promulgated thereunder by the Secretary of the Treasury in consultation with the Administrator of EPA (the Administrator). These regulations are found at 19 C.F.R. Part 12.

11. 19 C.F.R. § 12.111 states in part that all imported pesticides are required to be registered under the provisions of Section 3 of FIFRA, 7 U.S.C. § 136a, and under the regulations promulgated thereunder by the Administrator before being permitted entry into the United States.

12. 19 C.F.R. § 12.112 states in part that an importer desiring to import pesticides into the United States shall submit to the Administrator a Notice of Arrival of Pesticides or Devices

(NOA) (EPA form 3540-1), prior to the arrival of the shipment to the United States. See also Section 17(c) of FIFRA, 7 U.S.C. § 136o(c).

13. Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), states, in part, that it is unlawful for any person to violate any regulation issued under Section 19 of FIFRA.

14. Section 19(a)(1)(B) of FIFRA, 7 U.S.C. § 136q(a)(1)(B), states, in pertinent part, that the Administrator may require under Section 3 that the labeling of a pesticide contain requirements and procedures for the transportation, storage, and disposal of any container of the pesticide.

15. Section 19(e)(1)(B)(iv) of FIFRA, 7 U.S.C. § 136q(e)(1)(B)(iv), states, in pertinent part, that the Administrator shall promulgate regulations that facilitate the safe disposal or refill and reuse of pesticide containers.

16. 40 C.F.R. § 156.140, states, in pertinent part, that other than for plant-incorporated protectants, one of the following statements, as applicable (depending on whether the container is nonrefillable or refillable), must be placed on the label or container of a pesticide:

For Nonrefillable containers:

(a) *Nonrefillable container.* For non-refillable containers, the statements in paragraphs

(a)(1) through (a)(4) of 40 C.F.R. § 156.140 are required.

(1) *Statement identifying a nonrefillable container.* The following phrase is required: “Nonrefillable container.”

(2) *Reuse statement.* One of the following statements is required.

(i) “Do not use or refill this container.”

(ii) “Do not reuse this container to hold materials other than pesticides or

dilute pesticides (rinsate). After emptying and cleaning, it may be allowable to temporarily hold rinsate or other pesticide-related materials in the container. Contact your state regulatory agency to determine allowable practices in your state.”

(iii) The following statement may be used if a product is “ready to use” and its directions for use allow a different product (that is similar, but concentrated formulation) to be poured into the container and diluted by the end user: “Do not reuse or refill this container unless the directions for use allow a different (concentrated) product to be diluted in the container.”

(3) *Recycling or reconditioning statement.* One of the following statements is required:

- (i) “Offer for recycling if available.”
- (ii) “Once cleaned, some agricultural plastic pesticide containers can be taken to a container collection site or picked up for recycling. To find the nearest site, contact your chemical dealer or manufacturer or contact [a pesticide container recycling organization] at [phone number] or [web site].”
- (iii) A recycling statement approved by EPA and published in an EPA document, such as a Pesticide Registration Notice.
- (iv) An alternative recycling statement that has been reviewed and approved by EPA.
- (v) “Offer for reconditioning if appropriate.”

(4) *Batch Code*. A lot number, or other code used by the registrant or producer to identify the batch of the pesticide product which is distributed and sold is required.

For Refillable containers:

(b) *Refillable container*. For refillable containers, one of the following statements is required.

(1) “Refillable Container. Refill this container with pesticide only. Do not reuse this container for any other purpose.

(2) “Refillable Container. Refill this container with [*common chemical name*] only. Do not reuse this container for any other purpose.”

17. 40 C.F.R. § 152.50(b)(1) requires registrants not residing in the United States to designate an agent residing in the United States to act on the applicant’s behalf.

18. Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg), defines the term “distribute or sell” to mean to distribute, sell, offer for sale, hold for distribution, hold for sale, hold for shipment, ship, deliver for shipment, release for shipment, or receive and (having so received) deliver or offer to deliver.

19. Section 2(t) of FIFRA, 7 U.S.C. § 136(t), defines a “pest” as any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other microorganism (except viruses, bacteria, or other living microorganisms on or in living man or other living animals) which the Administrator declares to be a pest under Section 25(c)(1) of FIFRA, 7 U.S.C. § 136 w(c)(1).

20. Section 2(u) of FIFRA, 7 U.S.C. § 136(u), defines a “pesticide” as any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

21. Section 2(s) of FIFRA, 7 U.S.C. § 136(s), defines a “person” as any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

22. Section 2(y) of FIFRA, 7 U.S.C. § 136(y) defines a “registrant” as a person who has registered any pesticide pursuant to the provisions of FIFRA.

23. The Administrator may assess a civil penalty against any registrant who violates any provision of FIFRA of up to \$7,500 for each offense that occurred after January 12, 2009, pursuant to Section 14(a)(1) of FIFRA, 7 U.S.C. § 136l(a)(1), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

24. At all times relevant to this CAFO, Respondent was a corporation or any organized group of persons and therefore was a “person” as that term is defined at Section 2(s) of FIFRA, 7 U.S.C. § 136(s).

25. At all times relevant to this CAFO, Respondent was a “registrant” as that term is defined at Section 2(y) of FIFRA, 7 U.S.C. § 136(y).

26. At all times relevant to this CAFO, Monterey Agresources, located at 3654 South Willow Avenue, Fresno, California 93725, was Respondent’s authorized agent, as required at 40 C.F.R. § 152.50(b)(1).

27. At all times relevant to this CAFO, Schenker Inc., located at 2400 Esters Avenue, Dallas, Texas, was a broker/agent for Respondent.

28. On or about March 12, 2012, Respondent submitted an NOA under entry number 322-0677016-0 to EPA (the March 12 NOA). The March 12 NOA stated that it was related to an import shipment of the pesticide “Nordox Cuprous Oxide Paint Grade,” EPA Registration Number (EPA Reg. No.) 48142-2.

29. On or about March 19, 2012, Respondent submitted an NOA under entry number 322-0682256-5 to EPA (the March 19 NOA). The March 19 NOA stated that it was related to an import shipment of the pesticide “Nordox Cuprous Oxide Paint Grade,” EPA Reg. No. 48142-2.

30. The import shipment associated with entry number 322-0677016-0 entered the United States on or about March 24, 2012.

31. The import shipment associated with entry number 322-0682256-5 entered the United States on or about April 9, 2012.

32. The March 12 NOA and the March 19 NOA stated that Respondent, care of WOW Logistics Company, located at 3040 West Wisconsin Avenue, Appleton, Wisconsin 54914, was the importer of record.

33. Respondent, as the importer of record of “Nordox Cuprous Oxide Paint Grade,” EPA Reg. No. 48142-2, and by doing business in the United States, is subject to the requirements of FIFRA and the regulations promulgated thereunder.

34. “Nordox Cuprous Oxide Paint Grade,” EPA Reg. No. 48142-2, is a pesticide, as defined at Section 2(u) of FIFRA, 7 U.S.C. § 136(u).

35. The imported quantities of “Nordox Cuprous Oxide Paint Grade,” EPA Reg. No. 48142-2, associated with entry numbers 322-0677016-0 and 322-0682256-5 and the March 12 and March 19 NOAs, failed to bear a label with the required statements on the immediate containers of the pesticide product that identified the containers as being either “nonrefillable” or “refillable,” as required by 40 C.F.R. § 156.140(a) or (b).

36. On or about March 24 and April 9, 2012, Respondent “distributed or sold” the pesticide “Nordox Cuprous Oxide Paint Grade,” EPA Reg. No. 48142-2, as that term is defined at Section 2(gg) of FIFRA, 7 U.S.C. § 136(gg).

Specific Allegations

Count 1

37. Complainant incorporates by reference paragraphs 1 through 36 of this CAFO.

38. On or about March 24, 2012, in an import shipment associated with entry number 322-0677016-0, Respondent distributed or sold the pesticide “Nordox Cuprous Oxide Paint Grade,” EPA Reg. No. 48142-2, without the required “nonrefillable” or “refillable” label, in violation of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

39. Respondent’s violation of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), subjects Respondent to assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Count 2

40. Complainant incorporates by reference paragraphs 1 through 36 of this CAFO.

41. On or about April 9, 2012, in an import shipment associated with entry number 322-0682256-5, Respondent distributed or sold the pesticide “Nordox Cuprous Oxide Paint Grade,” EPA Reg. No. 48142-2, without the required “nonrefillable” or “refillable” label, in violation of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S).

42. Respondent’s violation of Section 12(a)(2)(S) of FIFRA, 7 U.S.C. § 136j(a)(2)(S), subjects Respondent to assessment of a civil penalty under Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

Civil Penalty

43. Section 14(a)(4) of FIFRA, 7 U.S.C. §136l(4), requires the Administrator to consider the size of the business of the person charged, the effect on the person's ability to

continue in business, and the gravity of the violation, when assessing an administrative penalty under FIFRA.

44. Based on an evaluation of the facts alleged in this CAFO and the factors in Section 14(a)(4) of FIFRA, Complainant calculated an initial civil penalty against Respondent in the amount of \$15,000. Complainant evaluated the facts and circumstances of this case with specific reference to EPA's Enforcement Response Policy for the Federal Insecticide, Fungicide, and Rodenticide Act, dated December 2009.

45. Within 30 days of the effective date of this CAFO, Respondent must pay a \$15,000 civil penalty for the alleged FIFRA violations. Respondent agrees to pay the penalty by wire transfer directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

46. A transmittal letter stating Respondent's name, complete address, the case title, the case docket number, the billing document number and a copy of the wire transfer receipt should be sent to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Claudia Niess (LC-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Terence Stanuch (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

47. This civil penalty is not deductible for federal tax purposes.

48. If Respondent does not pay the civil penalty timely, EPA may refer the matter to the Attorney General who will recover such amount by action in the appropriate United States district court under Section 14(a)(5) of FIFRA, 7 U.S.C. § 136l(a)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

49. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

50. This CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the CAFO.

51. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.


52. This CAFO does not affect Respondent's responsibility to comply with FIFRA and other applicable federal, state, and local laws.

53. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for FIFRA.

54. The terms of this CAFO bind Respondent, its successors, and assigns.
55. Each person signing this agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.
56. Each party agrees to bear its own costs and attorney fees in this action.
57. This CAFO constitutes the entire agreement between the parties.


Respondent:
Nordox AS,
Through its agent
Monterey Agresources,
Fresno, California

5/29/12
Date


Lynn Georges
Agent for Nordox AS
Monterey Agresources

Complainant:
Region 5
U.S. Environmental Protection Agency

6/18/12
Date


Margaret M. Guerriero, Director
Land and Chemicals Division
United States Environmental Protection Agency
Region 5

In the Matter of:
Nordox AS, through its agent, Monterey Agresources
Docket No. FIFRA-05-2012-0014

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

6-19-12

Date

S. H.

Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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PROTECTION AGENCY


CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Nordox AS, was filed on June 20, 2012, with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, and will be mailed no later than the next business day by Certified Mail, Receipt No.7009 1680 0000 7667 8117, a copy of the original to the Respondent:

Ms. Lynn Georges
Monterey Agresources
2935 South Koke Mill Rd.
Springfield, Illinois 62711

and forwarded copies (intra-Agency) to:

Ann Coyle, Regional Judicial Officer, ORC/C-14J
Terence Stanuch, Regional Judicial Officer, ORC/C-14J
Eric Volck, Cincinnati Finance/MWD



Frederick Brown
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Docket No. FIFRA-05-2012-0014

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